



Know your RIGHTS

There will be times when your computer gets you into a spot of bother and you won't know where you stand. **Andrew Wand** provides the legal perspective to put things straight

MY MOTHERBOARD WASN'T SLI-COMPATIBLE

Q I decided to build myself a new PC earlier this year and wanted to try SLI graphics. I bought a motherboard, graphics cards and a processor from an online store based in the UK. The graphics cards and motherboard were advertised with the SLI logo.

Having put these components together in an existing case and added memory and drives, I installed Windows XP. I used the supplied graphics drivers on the CD provided but any attempt to play a game crashed the PC. I then downloaded and installed the latest drivers for the graphics card, and having installed them I got an error message implying that I did not have SLI-compliant graphics cards installed.

I sought assistance from the online store and asked if I should return the motherboard, the graphics cards, or both. The reply said I should return the motherboard since the company had found some problems with them. After a few days I received an email saying the motherboard had been tested with another brand of graphics card and found to be working, so did I want it back? If I didn't, there would be a 20 per cent restocking charge. I pointed out that my problem was with the graphics card, also bought there, and that the board should be tested with those cards. The

response was that I had two options: pay for retesting or accept the restocking charge. I said that I had more than two options, since I could take legal action. The reply stated that I had chosen to return the motherboard and as far as the company was concerned, the motherboard was working.

I pointed out all the previous emails where we had tried to decide what was defective and that I had returned the motherboard as instructed, but I hit a brick wall. In the end, I compromised and accepted a 10 per cent restocking fee to call it a day.

A The Sale of Goods Act (as amended and updated) states that goods must be as described, fit for their purpose and of satisfactory quality. Both the motherboard and graphics card were advertised and described to you as being SLI-compatible. The fact that they don't work together probably means that they have either been described incorrectly or that they are not fit for the purpose. Either way, you are entitled to a full refund, to be reimbursed for return postage costs and not to be charged a restocking fee.

The problem here is that following testing, the retailer has denied that there is any fault with the motherboard and so has treated its return as a cancellation under the Consumer Protection (Distance Selling) Regulations 2000. Under Regulation 14, the retailer may make a charge *not exceeding the direct costs of recovering any*

goods supplied under the contract. A 20 per cent restocking charge seems high and you should check the retailer's terms and conditions to see if you had prior notification of the cancellation and restocking charges in accordance with Regulations 7 and 8.

This is the legal standpoint, but in reaching a compromise with your vendor, your solution is probably a more practical one. Had the dispute escalated, your only redress would have been to bring a claim in the Small Claims track of the County Court. Litigation by its very nature is fraught with uncertainty, and costs time as well as money. Furthermore, it remains possible that the graphics card and motherboard were fully functional and compatible but it was another element of your system or something that you were doing that caused the problem. While it is possible that the retailer would have capitulated, to prove your claim you would need evidence and it is likely that the judge would expect a short report from an expert confirming your position. Given that the supplier had offered a compromise of a refund minus a 10 per cent restocking charge, the judge is likely to take a dim view of an argument over less than £25 in circumstances where the cost of the Court issue fee, the expert and the parties' time would be over 10 times the sum in dispute.

If you feel badly let down by the retailer, you should take your refund and vote with your feet by spending it with a different retailer.



HOW CAN I CHECK FOR CCJs AGAINST A COMPANY?

Q I had a major problem with a mail order computer company that had a CCJ (County Court Judgement) against it. The Trading Standards Office say they tell people to check any company in case they have CCJs or similar legal problems before dealing with them.

How are ordinary people supposed to do this before they buy? It's not easy to find all the CCJs against a company. They are held at the County Courts, so you need to visit the court, usually in person, to see if a mail order company has a problem. This is not really feasible unless it is a local firm. Is there any way an ordinary person can get the Trading Standards Office to work for them in identifying suspect companies?

A The Register of County Court Judgments is maintained on behalf of the Court Service by a company called Registry Trust Limited. Visit www.registry-trust.org.uk/home/tabid/35/default.aspx for more details.

The Register contains details of money judgments from the County Courts of England and Wales for the past six years and is accessible to anyone. This search will give details of the defendant, the date and the amount of the judgment as well as the court and case number concerned. Results are normally sent out by second-class post within 24 hours. However, there is a catch as each search costs £4.50.

It is in my view unrealistic for consumers to spend £4.50 each time they want to check a retailer for CCJs. If the government is truly committed to consumer protection, it should consider making the service free to members of the public. It may make sense for consumers to check the register before entering into expensive transactions, but otherwise the usefulness of the register is questionable. Large retailers often have complex corporate structures and it would be difficult for the general public to ascertain exactly which name they should search against – parent, subsidiary or trading name. Rogue retailers are in the habit of abandoning companies that become blacklisted and starting up new companies when it suits them.

I am afraid that like any government organisation, Trading Standards are under-resourced and underfunded. The last case I dealt with that was referred to Trading Standards concerned the rejection of a BMW 740 Sport,



NEW EXTENDED WARRANTIES LEGISLATION

In July 2002 the Competition Commission carried out extensive research on the supply of extended warranties for domestic electrical goods in the UK. The report is comprehensive and a bit of a slog, but a summary of it can be found at www.competition-commission.org.uk/rep_pub/reports/2003/485xwars.htm#summary. Following the report, the Supply of Extended Warranties on Domestic Electrical Goods Order 2005 came into force on 6th April 2005. The full text can be found at www.opsi.gov.uk/si/si2005/20050037.htm.

The key points to The Supply of Extended Warranties on Domestic Electrical Goods Order 2005 are that retailers must:

- Show the price of the extended warranty alongside electrical goods, in store and in their printed advertising material.
- Provide consumers with information about their statutory rights, cancellation rights and details of the warranty, including whether or not their warranty provides financial protection in the event of insolvency and/or terminates if a claim is made.
- Give consumers 45 days to cancel their extended warranty, including issuing a written reminder of this right and the right to cancel at any time and receive a pro-rata refund.

which had been bought online and subsequently rejected in time under the Consumer Protection (Distance Selling) Regulations 2000. The retailer refused to acknowledge the rejection and refused to provide a refund. The matter was reported to the Trading Standards offices local to the client and also to the offices local to the retailer and yet no action was taken despite the value of the transaction. County Court proceedings were subsequently commenced and a year later the retailer eventually capitulated and paid a full refund together with legal costs of over £20,000. I am afraid that as with most things in life, if you want to sue someone properly you will have to sue them yourself.

WHY ISN'T MY WARRANTY BEING HONoured?

Q I am writing regarding my PC's warranty. In October 2004 I bought a PC in a store with five years warranty (three years onsite and a further two years collect and return). I paid for the PC and the extended warranty by cheque. Recently, I received a letter with the news that the company from which I bought the PC had gone into liquidation and had been bought by a rival company.

The new company informed me that all outstanding warranties were terminated immediately. I was offered the option of buying one of three warranty options for one to two years at a cost of up to £99. As I bought my PC mainly due to the excellent warranty, I don't know what to do now.

Is the new company correct not to recognise the outstanding warranty and cancel it? If so, what should I do? Furthermore, did the original retailer have a moral and legal obligation to inform its customers about the forthcoming changes?

A Increased competition in the PC retail sector, lower prices and tighter profit margins mean an increasing number of PC retailers are in financial difficulty. It used to be the case that picking a named high street PC retailer would provide some security, and it would be normal to assume that the retailer would be around and in business for the life of the average extended warranty. However, the recent demise of a large national high-street chain is proof that this no longer holds true.

Some extended warranties are insurance-backed and independent of retailers. However, if the retailer that sold you the extended warranty has gone into insolvent liquidation and you have been formally notified that your warranty is no longer available, there is probably very little that you can do. Had you bought the PC warranty on a credit card you may have been able to take up your case with the credit card company. However, given the time lapse and the low sum involved for the extended warranty it would be an uphill struggle.

The liquidator's core role in cases of insolvent liquidation is to realise assets and provide a return to the insolvent company's creditors. The liquidator can disclaim 'onerous property', which is defined as "any unprofitable contract or any other property of the company which is unsaleable or not readily saleable or gives rise to a liability to pay money or perform any other onerous act".

The new company has probably bought some or all of the assets of the other company. There is no legal obligation for it to take on responsibility for the remainder of your extended warranty, which would be seen as a liability. Your name will have appeared on a database and you will be seen as a sales opportunity. Bear in mind that in the UK over £1 billion is spent each year on extended warranties for domestic electrical goods, and the profit margin on warranties is enormous.

New legislation concerning extended warranties came into force in April 2005; see the box above. Unfortunately it is too late for your case, but it will be of immense help when buying warranties in the future. **CS**

CONTACT

If you have any computer-related legal queries that you would like to see covered in a future issue, please email us at

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The views within this article are those of the author. You are advised that this article is for guidance purposes only and does not constitute legal advice. Please note that we are unable to enter into any personal correspondence.

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